

The fact that no evidence has been uncovered to prove that Interior's denial of the Hudson casino application was corrupt does not mean that the Committee's inquiries about potential corruption, or into matters such as Babbitt's truthfulness with McCain, were immaterial to the Committee at that time. Materiality is assessed as of the time the potentially perjurious statement was made, not with the benefit of hindsight. That is the reason a "false statement can be material even if ultimately the conclusion of the tribunal would have been the same."⁸⁶⁴

It would have been significant to members of the Senate Committee to learn that Babbitt intended to mislead McCain, particularly if Babbitt had misled McCain in order to prevent further inquiry by McCain and the Indian Affairs Committee into the Hudson matter.⁸⁶⁵ The effect of that testimony by Babbitt before the Senate Governmental Affairs Committee would itself have had the effect of influencing lines of inquiry and further investigation into Hudson. While this testimony appears to us to have been legally material, the actual importance of the testimony arguably is limited, which could considerably reduce the jury appeal of a prosecution. The basic facts – what Babbitt wrote to McCain, and what the truth really was about the Eckstein conversation – were before the Committee. It was clear that Babbitt had in fact made a misleading statement to McCain, and clear that his having done so raised questions about what had really occurred in connection with Hudson and whether Babbitt's revised account of his conversation with Eckstein, and his consistent denials of improper contact with Ickes, were in fact truthful. Whether Babbitt's retrospective characterization of his motives and mental state

⁸⁶⁴*DeZarn*, 157 F.3d at 1051.

⁸⁶⁵Babbitt's answers to McCain's questions determined the course of action the Committee on Indian Affairs took and were at heart of what McCain was trying to establish through his inquiry to Babbitt.